



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND
SECURITY

**Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and
Extremism Bill 2026**

(Public)

WEDNESDAY, 14 JANUARY 2026

CANBERRA

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PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

Wednesday, 14 January 2026

Members in attendance: Senators Cash [by video link], Ciccone, Duniam, Grogan [by video link], McDonald [by video link] and Marielle Smith [by video link] and Ms Claydon [by video link], Mr Laxale [by video link], Dr Reid [by video link] and Mr Thompson [by video link]

Terms of Reference for the Inquiry:

The Committee is reviewing an Exposure Draft of the Combatting Antisemitism, Hate and Extremism Bill 2026. The proposed legislation aims to further criminalise hateful conduct, expand powers to allow for cancellation or refusal of visas and set up a national firearms buyback scheme.

KURTI, Mr Peter, Senior Research Fellow, Centre for Independent Studies [by video link]

MERRITT, Mr Chris, Vice President, Rule of Law Institute of Australia [by video link]

[14:23]

CHAIR: I welcome witnesses from the Rule of Law Institute of Australia and the Centre for Independent Studies. Although the committee does not require you to give evidence under oath, I should advise that this is a hearing of the parliament. Being a legal proceeding of the parliament, it therefore has the same standing as proceedings of the respective houses. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. As stated earlier today, given the short timeframe that we are working within to complete our review, please answer all questions or provide information to the best of your ability in today's evidence. Do either of you gentlemen have an opening statement that you want to make, or can we go straight to questions?

Mr Merritt: I've got a brief opening statement, if that's okay.

CHAIR: Sure.

Mr Merritt: Firstly, thank you for inviting me to appear at this inquiry, even at such short notice; it's much appreciated. My organisation, the Rule of Law Institute, is an independent, nonpartisan and nonprofit body which was formed to promote and uphold the rule of law. The rule of law consists of principles of governance and lawmaking that enable free societies like ours to protect themselves against the arbitrary exercise of power. It gives effect to ideas that go to the heart of what this country is all about—equality before the law and equal protection by the law. This helps explain why the institute supports the need to change aspects of federal criminal law in order to properly respond to the terrorist attack at Bondi Beach on 14 December last year. That attack demonstrated that there is a clear need to address the culture of Jew hatred that has taken hold in parts of the community.

This is why the most important part of the proposed changes is the provision criminalising the promotion of racial hatred. This provision, in part 5 of the bill, would result in people being jailed for public statements; that's a very big step. Freedom of communication is a fundamental right of citizenship but none of our rights are absolute, and parliament has a responsibility to ensure that the balance between differing rights remains appropriate when circumstances change.

After Bondi, change is clearly needed. Public safety requires a measured but necessary move against one clearly defined form of speech. The death toll from Bondi is the most compelling argument in favour of abolishing the freedom to promote racial hatred. If the goal is to prevent further radicalisation, and therefore more terrorist attacks, it is entirely appropriate to target the source of radicalisation, which is the public promotion of Jew hatred. This, however, should not be viewed as a green light for criminalising other categories of speech. The terror attack at Bondi was based on race and ethnic origin, not on sexuality, gender preference or any other criterion.

The new vilification offence is clearly targeted at those who promote racial hatred, but it has a fatal flaw: its legitimate goal is at risk of being undermined by the proposed defence which protects those who include a quote from a religious text or even a mere reference. Unless this defence is removed, it would amount to a betrayal of members of the Islamic community who might oppose religious leaders using their position to promote Jew hatred. It would be seen as encouragement for hate preachers who have promoted Jew hatred in recent years by linking their statements to the reading of religious texts. This cannot be what parliament seeks to achieve.

The defence amounts to a guide for hate preachers. It tells them exactly what they need to do in order to continue promoting racial hatred with impunity. Removing this defence would mean that the new offence of promoting racial hatred would apply to everyone. It would be impossible to avoid liability by the simple mechanism of reciting a few words. This requires parliament to accept that religious freedom, like free speech generally, can be restricted in order to place greater emphasis on public safety. This should not be seen as contentious. The law already prevails over passages, for example, in the Bible such as Leviticus 20:13, which seeks to impose the death penalty for homosexuality.

The point here is that we do not live in a theocratic society. Laws made by parliament prevail to the exclusion of any conflicting mandate in any religious text. That principle should not be eroded.

CHAIR: Thanks a lot. Peter, do you have an opening statement or remarks?

Mr Kurti: Yes, I have an opening statement, if I may?

CHAIR: Please.

Mr Kurti: Thank you very much for the opportunity to address you on this significant bill. I appear before you from the Centre for Independent Studies, where my work focuses on the cultural and institutional foundations of

free societies, particularly civil society, liberal democracy, religious liberty and social trust. One principal question that guides my research is simply: how are we to live together?

I wish to affirm clearly that antisemitic violence, intimidation and harassment are real, corrosive and unacceptable and that the state has not only the right but, in my view, the duty to respond. However, my concern today is not with the bill's purpose but rather with its method and scope. The bill is not merely a security response to violence but represents, in my view, a significant shift in the moral and legal architecture of public life—one that runs the risk of blurring crucial distinctions and, in doing so, weakening both law and society.

Liberal democracies traditionally distinguish between three kinds of harmful conduct: first, immoral or offensive conduct, which should primarily be addressed through social norms and the moral resources of civil society; second, dangerous conduct, which may justify monitoring or disruption and prevention; and, third, criminal conduct, which justifies coercion, punishment, stigma and the deprivation of liberty through the judicial process. My concern is that this bill—which I have not been able to study in great depth but of which I've got a cursory overview—tends to collapse these categories into one another, and it shifts us from punishing acts to managing risks, from adjudicating harm to preventing possibility, and from regulating conduct to regulating expression and identity.

One feature that does concern me is the introduction of status based aggravation into criminal law, whereby religious officials can face higher penalties not for doing something different but for being someone different. The embedding of motive as a pervasive aggravating factor also moves criminal justice away from judging what people do toward judging what they think and feel, and I think this is a profound shift in the character of criminal law.

The proposed prohibited hate groups regime concerns me somewhat because, whilst it mirrors terrorism law in structure, it extends those exceptional powers to a new domain, the domain of a political and contested concept of hate. Groups may be listed by regulation or ministerial satisfaction, with limited procedural safeguards. Membership and support become criminal, where 'support' is so broad that it could capture academic analysis or journalistic inquiry. I think this moves us from criminalising acts to criminalising association and alignment, with heavy executive discretion and limited judicial oversight.

The new vilification offence similarly expands criminal law into expression. It criminalises public conduct intended to incite hatred where a reasonable member of the targeted group would feel intimidated or fear violence, with strict liability for the fear element. This invites subjective or politicised judgements about emotional impact rather than objective harm.

My concern is that, by overlegalising our response to the very real and troubling problem of antisemitism, we may undermine the very thing that we seek to protect, because antisemitism is not only a security problem; it's a moral and a cultural problem. Treating it primarily through criminal law risks weakening the social taboo that makes antisemitism unacceptable, and, when moral responsibility is outsourced to law enforcement, civic responsibility withers. The effectiveness of law in a liberal democracy depends on its legitimacy—on public trust that it is fair, proportionate, restrained and neutral. My concern, on my reading of this bill, is that it risks eroding that trust by expanding criminal law into belief, identity and association, by shifting power from courts to administrators, and by introducing differentiated treatment based on status and motive.

So what might a better response look like? Well, first, I think we should keep criminal law tightly focused on violence, threats and direct incitement—conduct with clear links to tangible harm. Second, if administrative powers are used, they should be applied narrowly and transparently, with strong procedural safeguards and judicial oversight. Third, we should preserve the distinction between what is illegal and what is offensive. Not everything that is wrong should be criminal. Fourth, we should invest seriously in civic responses: education, civics education, community leadership and the strengthening of social norms that make extremism culturally unacceptable. And, fifth, we should include sunset clauses for exceptional powers so that measures adopted in crisis do not become permanent without scrutiny.

I would like, therefore, to recommend the removal of status based aggregations, the narrowing of the prohibited hate groups regime to organisations that directly incite or organise violence, the removal of strict liability from the vilification provisions and the requirement of proof of intent to cause fear or intimidation, and the strengthening in general of procedural safeguards throughout. The ultimate test of the bill is not whether it appears tough but whether it proves trusted; it's not whether it suppresses harmful speech but whether it preserves the conditions of a free and plural society.

The fight against antisemitism certainly requires criminal law, but it also requires civic courage, moral clarity and social solidarity. My concern is that the bill as drafted risks weakening all three. Thank you very much for the opportunity to appear before the committee.

CHAIR: Thank you very much, gentlemen. I'm going to hand the call over to Senator Duniam.

Senator DUNIAM: Thank you, both, very much for your time and for your statements already. I'm going to be brief in my questions. I might start with you, Mr Merritt. You gave us a fairly in-depth analysis of your view of the religious-text defence that has been included in these draft laws. We'll put that to one side. A number of witnesses have provided their views on that. In relation to the rest of the bill as it stands, I want to ask both of you generally—Mr Kurti, you've just spoken about some changes you would recommend, but I'll start with you, Mr Merritt—if there is anything that could be done to this legislation that would make this something that would remove all of the risks and concerns that you have with regard to its application. If it were passed in its current form, how could we amend it to remove those concerns you've raised?

Mr Merritt: First up, I'd remove the carve-out defence. If that were to go through, we would be left with a law ostensibly designed to address hate speech that exempts hate preachers, which would be ludicrous. That's point No. 1. I'm also concerned about the test for liability in the vilification offence, which seems to be drafted in a way that does not invoke general community standards. It seems to be modelled on the overly subjective approach to liability that is to be found in section 18C of the Racial Discrimination Act. Without getting too technical, in 18C civil liabilities are imposed when a reasonable person in the position of those complaining would be offended, insulted, humiliated or intimidated. It's civil. But, under the bill we're now looking at, criminal liability would be imposed when the conduct in question causes a reasonable person who is targeted by the speech concerned or is a member of the group targeted to be intimidated, to fear harassment or violence, or to fear for their safety.

If the point here is to make criminal liability the test here, it's logical that general community standards should be the bellwether for whether liability is incurred or not. Otherwise liability would be incurred in different circumstances depending on a range of particular cases, which would make it very difficult over time to look at the body of judgments and determine with confidence what sort of speech is now considered to be unlawful. It's those two things. The defence needs to go. It's totally counterproductive and is at odds with the clear, legitimate goal of the rest of the vilification offence. And I'd have another look at the test for liability. I think general community standards should be the test rather than whether a reasonable person in the position of the person targeted would feel harassed et cetera. Those two changes would be important. Like Peter Kurti, I haven't had sufficient time to go through the entirety of this material, but those are the major changes that I think are needed.

Senator DUNIAM: Noting that, of course, this is 150 pages or thereabouts of legislation and 350 pages of explanatory memorandum. That's difficult to get your head around in 48 hours in any level of detail, so I'm grateful to both of you for your assessment thus far.

On that test for liability, you talk about general community versus the reasonable person in the grouping. That's difficult as well for courts. How does a court determine that standard within a particular grouping if they're not part of the group? I suppose there's a process to go through, but it does add a layer of complexity to this that wouldn't exist if it were that general community standard. Is that right?

Mr Merritt: Yes, that's my view, particularly because we're talking about jailing people. Unless it's clear that they've breached community standards, I think it would bring the law into disrepute. It would send the message that breaching the standards of a particular group could result in a prison sentence, which I don't think is what the criminal law is all about. I think it's about the general standards of the entire community being upheld, and I think that's the way that the law should be structured.

Senator DUNIAM: Mr Kurti, you outlined five areas of work that would be, in your view, worth pursuing. In the same vein of questioning that I asked Mr Merritt, is that your response? Not all of it is related to the legislation, like civic responses et cetera, but if this committee has before it a draft bill—the parliament will have before it a bill next week—what's your advice to us? We will make recommendations to the parliament. What is it you're saying we should do with the 150 pages of law before us?

Mr Kurti: I echo and support some of the arguments that Chris Merritt has just made with regard to the reasonableness test. I'm concerned about the strict liability test from the vilification provisions, because I think it's important to establish proof of intent to cause fear where somebody might be found to have committed an offence on the basis of strict liability without having known that they'd even done anything. So I'm concerned about the strict liability provision. We need to ensure that there are procedural safeguards to ensure that the processes of natural justice are not suspended and that we don't lose sight of those principles.

One thing I didn't mention but would add now is that there ought to be a three-year sunset clause with mandatory independent review before the renewal of provisions that are afforded in the bill. I would like to see the narrowing of the prohibited hate groups regime. I understand the intent of the bill and I understand and appreciate the urgency with which the government wants to be seen to act on this set of circumstances, but I think that the prohibited hate groups regime at the moment is wide and it should be narrowed to organisations that directly incite or coordinate

violence, and, again, I think there should be mandatory judicial review of listing decision. Those are my principal concerns on my initial reading of the bill.

Senator DUNIAM: Yes, at first blush. Noting that again, thank you both for providing that level of analysis with only a day and a half to read it. It is complex. Mr Merritt, if you had to start from scratch, what would you advise government to do to address antisemitism and Jew hate?

Mr Merritt: I think the approach taken by David Gonski and now the royal commission, focusing on civics education particularly, is absolutely critical. If the purpose here is to avoid further radicalisation, we need to get into the marketplace for ideas and argue the case for the principles that underpin democracy, including the rule of law, equal protection and equality before the law, so that vulnerable people—vulnerable young people and not just young people but new arrivals in this country from places that don't have a thorough understanding of democracy or the principles of the rule of law—are given the weapons they need to resist the push for radicalisation that has clearly taken root in significant parts of society. Unless we're in that marketplace, educating children and trying to head off radicalisation by giving vulnerable people values that they can hold onto as a bulwark against radicalisation, I think we'll lose. You can pass as many pieces of legislation as you like, but unless we win that battle for ideas right at the very beginning—at the border when new arrivals arrive in this country and in every school—I think we're still heading for trouble.

Senator DUNIAM: Dealing with it at the root, I suppose you could say, absolutely makes sense to me. When it comes to what's happening now and those in society who might participate in this, what about hate speech itself and the hate preacher? What do we do or how can we tackle what is said in that vein by these people?

Mr Merritt: I wouldn't delay in getting this proposed vilification offence on the statute book with the changes that I've suggested and with the suggestions coming from Peter Kurti. They all seem very sensible. I've come to my conclusion reluctantly. Before Bondi I was a great supporter of hanging incitement offences on the potential to incite violence, but Bondi should require a rethink by lawmakers. It's required me to rethink that view as well. Very reluctantly, I've come to the conclusion that we have no real alternative but to criminalise one discrete category of speech. I'd be very reluctant to go beyond that. There's no case been made for going beyond that. There is a clear case for outlawing racial vilification, Jew hatred, in all its forms, but I'd be very reluctant to go beyond that.

Senator DUNIAM: When you say 'one discrete category', do you mean in relation to antisemitic hate speech?

Mr Merritt: I mean racial hatred generally. In practical terms that means Jew hatred, antisemitism. We're unlikely to see cases of—I suppose we might see cases of Hindu hatred or something similar. But the case in point, the real problem that we're confronting and the mischief that needs to be addressed is antisemitism and Jew hatred.

Senator DUNIAM: Thank you, Mr Merritt.

CHAIR: Thank you very much. I'm mindful of time. We need to keep moving along. Thanks a lot, gentlemen, for your attendance today. If there is anything that we've requested of you, please provide any answers or information back to the committee by the end of today